IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 354 of 1981

For Approval and Signature:

Hon'ble MR.JUSTICE M.H.KADRI
and
Hon'ble MR.JUSTICE H.H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

MAHENDRABHAI BABUBHAI

Versus

VAJIRKHAN PARBATKHAN PATHAN

Appearance:

1. First Appeal No. 354 of 1981

MR CHANDRAKANT SHAH for Petitioners No. 1-6

MR SANDIP C SHAH for Petitioners No. 1-6

NOTICE SERVED for Respondent No. 1

MR MD PANDYA for Respondent No. 2

CORAM : MR.JUSTICE M.H.KADRI
and
MR.JUSTICE H.H.MEHTA

Date of decision:__/12/2001

CAV JUDGEMENT (Per : MR.JUSTICE H.H.MEHTA)

The original claimants/petitioners have, by preferring this appeal under Sec.110-D of the Motor Vehicles Act, 1939 (for short the "Act"), challenged the Judgment and Award dated 25th November, 1980 passed in Motor Accident Claim Petition No. 34 of 1980 by the Motor Accident Claims Tribunal, Sabarkantha at Himatnagar.

2. On 1/10/1979, deceased Babubhai Mohanlal Sathwara whose heirs and legal representatives filed Motor Accident Claim Petition No. 34 of 1980 was, by driving a motor cycle bearing registration No. GJI-1189, going from Prantij to Ahmedabad and when he was passing on Himatnagar - Ahmedabad Road, i.e. National High Way No.8 and when he reached near signed board indicating distance of Ahmedabad at 55 KMS, one S.T.Bus bearing registration No. GRS 7963 which was being driven by respondent No.1, of the ownership of respondent No.2, came from behind in rash and negligent manner so as to endanger the human life and dashed against the said motor cycle of the deceased Babubhai Mohanbhai Sathwara, as a result of which, the said motor cycle was dragged all along with the S.T.Bus and deceased who was driving the said motor cycle was flung on right side of the road. In that vehicular accident, deceased sustained serious head injuries and succumbed to injuries, on the spot. It is the case of the appellants that the deceased died as a direct result of rash and negligent driving of the S.T.bus by respondent No.1.

2.1 It is the case of the appellants that the deceased was serving as "B" Grade Officer in Bank of India, Ellisbridge Branch, Ahmedabad, and at that time, he was drawing Rs. 2,631/- as salary per month. The birth date of the deceased was 22/2/1922, and therefore, On the date of the accident, he was aged about 57 years.
2.1 On or about 1/2/1980, the applicants filed Motor Accident Claim Petition No. 34 of 1980 under Sec.110A of the Act to obtain an award of Rs. 1,20,000/- as compensation, from both the respondents.

3. The respondents appeared and contested the claim petition filed by the applicants by filing their written statement at Ex.14, wherein they have practically denied the entire case of the applicants. They admitted an occurrence of incident of the accident, but it is their case that accident did not occur as a result of driving of S.T.Bus by the respondent No.1. There is no dispute with regard to involvement of S.T.Bus No. GRS 7963. It

is also not in dispute that the deceased was driving Motor Cycle No. GJI 1189.

4. As pleaded in Para 10 of written Statement Ex.14, a case has been advanced that the accident occurred as a result of contributory negligence of the deceased himself, and therefore, the applicants are not entitled to any compensation from the respondents.

5. From the pleadings of both the parties, the Tribunal framed issues at Ex.15. For contributory negligence on the part of the deceased, a specific Issue No.3 was also framed and burden of proof for alleged contributory negligence was placed on the opponents. Keeping in mind the issues framed at Ex.15, both the parties led their oral as well as documentary evidence. Thereafter, after hearing the arguments of the learned Advocates for both the parties, and after analysing and appreciating the evidence led by both the parties, the Tribunal rendered judgment dated 25th November, 1980 and passed the award in favour of the applicants by awarding compensation of Rs.60,000/-. The Tribunal came to conclusion that deceased died as a result of rash and negligent driving of S.T.Bus No. G.R.S. 7963 which was being driven by the opponent No.1. Simultaneously, the Tribunal also came to the conclusion that for said vehicular accident, both deceased as well as opponent No.1 were equally liable and therefore the Tribunal assessed apportionment of negligence in ratio of 50% : 50% and awarded Rs.60,000/- as compensation to the applicants with proportionate costs and running interest at the rate of 6% p.a. from the date of the application till the date of realisation.

6. Being aggrieved against and dissatisfied with the said judgment and award dated 25/11/1980, the original applicants/claimants have preferred this appeal.

7. We have heard Shri Sandip C. Shah, the learned Advocate for the appellants and Ms. Mayaben Desai, the learned advocate for the opponents in detail at length.

8. Shri Sandip C. Shah has also supplied a simple paper book consisting of copy of claim petition, copy of list Ex.4, copy of written statement Ex.14 and copy of panchnama Ex.44.

9. Learned Advocates have taken us through the entire evidence on record and also documents produced with simple paper book supplied by Shri Shah.

10. At the outset of arguments, Shri Sandip C. Shah has submitted that the applicants have no disputes as against the amount of awardable compensation computed by the Tribunal, His arguments are restricted only to finding with regard to contributory negligence on the part of the deceased. He has argued that looking to oral as well as documentary evidence on record, in no case it can be said that the deceased had contributed any negligence in the said vehicular accident. As per his arguments, the S.T. driver was solely responsible for the said accident, and therefore, his challenge is with regard to deduction of an amount of Rs.60,000/- on the ground that the deceased had contributed 50% negligence in vehicular accident. His co-related arguments are also on the point that the Tribunal has erred in deducting an amount of Rs.60,000/from Rs.1,20,000/-. As per his arguments, the Tribunal arrived at a figure of Rs. 1,36,013/- as awardable amount of compensation. The Tribunal, instead of deducting an amount on the ground of contributory negligence on the part of the deceased, from this amount of Rs. 1,36,013/-, first arrived at a decision that the applicants are entitled to get compensation of Rs.1,20,000/- because the applicants have restricted their claim for Rs.1,20,000/-. He has argued that the Tribunal has erred in deducting Rs.60,000/- from rs.1,20,000/-. The Tribunal ought to have deducted an amount of 50% from Rs. 1,36,013/- and therefore, his contention is to the effect that the Tribunal has awarded very less amount than what the applicants are entitled to.

11. At this stage, it is required to make a note that the respondents have not preferred any appeal against the judgment and award passed in aforesaid case, meaning thereby, they admit that the opponent No.1 who was the driver of the S.T.Bus, was responsible for the accident to the extent of his 50% negligence.

12. Shri Shah has argued that the Tribunal has grossly erred in appreciating the evidence for arriving at a decision that the deceased had contributed 50% negligence. The Tribunal has not appreciated the evidence in light of relevant provisions of 10th Schedule below the Act. Ms. Mayaben Desai has supported the judgment of the Tribunal and argued that looking to the facts and circumstances of the case and considering entire evidence led by both the parties, the Tribunal has rightly come to a conclusion that the deceased has contributed negligence of 50% and the Tribunal has awarded just and adequate amount of compensation to the applicants, and therefore, the judgment and award are not

required to be disturbed in this appeal.

13. Whether the Tribunal has rightly appreciated the evidence keeping in mind the provisions of 10th Schedule below the Act, it is necessary to make a note of certain admitted facts. Both the parties have placed reliance on a panchnama of scene of accident which is at Ex.44. From this panchnama Ex.44, following facts can be summarized:

(1) Accident occurred on National Highway No.8 leading from Himatnagar to Ahmedabad and this road leads from east to west. Himatnagar is towards the eastern side, while Ahmedabad is towards the western side.

(2) Road is of width of 24'.

(3) Accident occurred near 'signed-board' indicating distance of Ahmedabad from that place at 55 KMS.

(4) On northern side from scene of accident, there is a kachcha way which leads to fields and on southern side, there is a Kachcha way which leads to Prantij.

(5) There was a pool of dried blood in the circumference of 3' and Rajdoot Motor Cycle was found lying at the said place of accident.

(6) Steering and mudguard had been bent down. Bumper on right side of the motor cycle was completely broken. Damage of Motor Cycle was assessed to an extent of Rs.500/-.

(7) A broken career of motor cycle was found lying at a distance of 25' towards western side, where one piece of Chappal was also found lying.

(8) One S.T.Bus bearing No. GRS 7963 was found at a distance of 91' away from place of accident and it was facing towards Ahmedabad i.e. towards western side.

(9) A blue colour iron sheet near left hand Head Light of S.T. bus was found in bend condition and there were two holes in that iron sheet.

(10) Right side handle of accelerator of the motor cycle and its wire were found lying near the bus.

(11) There was one tamarind tree on Kachcha road at a distance of 39' from the place of accident towards north. There was one culvert bearing No. 2/465 towards west i.e. towards Ahmedabad and left side corner of that culvert was 60' away from the place of accident and right side corner of that culvert was 30' away from place of accident.

(12) There was one 'signed board' indicating distances of Harsol and Himatnagar, 85 feet away from the place of accident towards eastern side on right side of road. That Board indicated that Harsol was 23 KMS. away, and Himatnagar was 22 KMS away.

(13) There was a 'signed board' indicating distance of Sabarmati Yojana at 87 KMS at a distance of 42' away from place of accident towards eastern side. And on side-edge of road, there was a tar road having curve leading to Talod.

14. Keeping in mind the aforesaid admitted facts with regard to spots of dried blood pool, motor cycle, dead body and S.T., the Tribunal was required to come to a conclusion as to who was negligent for aforesaid vehicular accident in which the deceased Babulal Mohanlal died. One thing is certain that the Tribunal has appreciated and evaluated the evidence and come to a definite conclusion that the driver of the S.T.Bus was negligent to the extent of 50%, as against which no appeal is filed by the G.S.R.T.C. In view of the fact that neither driver nor G.S.R.T.C. has filed appeal against the impugned judgment and award, they admit negligence on part of the driver of the S.T.Bus.

15. When the claimants have come with specific a case that the said vehicular accident occurred as a result of rash and negligent driving of S.T.Bus by opponent No.1 and when the Tribunal has found that S.T.driver is responsible for the accident, and according to the Tribunal, the S.T. driver was negligent to the extent of 50%, it is the duty of the opponents to prove that the deceased had contributed his negligence in the said vehicular accident.

16. If we read the written statement filed by the opponents, we find that they have pleaded the case of contributory negligence on the part of deceased, and therefore, burden lies on the opponents to prove

contributory negligence on the part of the deceased. It would be a wrong proposition advanced by opponents that claimants should prove that there was absence of contributory negligence on the part of the deceased. In view of this legal position, the appellate Court has to examine the impugned judgment as to whether the Tribunal has appreciated the evidence, keeping in mind the legal position that it is the duty of the opponents to prove contributory negligence on part of the deceased. If the opponents prove that there was a contributory negligence on part of the deceased, then from the facts and circumstances of the case, the Tribunal has further to assess that contributory negligence on part of the deceased.

17. To decide as to whether burden of proof for proving contributory negligence on part of the deceased is discharged by opponents, one has to examine the case of the opponents, and evidence led in light of that case pleaded in the written statement. At this stage, it is also necessary to place on record the observations made by the Hon'ble Supreme Court in Para 3 in case of N.K.V. Brother (P) Ltd. Vs. M. Karumai Ammal and others reported in AIR 1980 SC 1354 as follows:

> "Road accidents are one of the top killers in our country, specially when truck and bus drivers operate noeturnaly. This proverbial recklessness often persuades the courts, as has been observed by us earlier in other cases, to draw an initial presumption in several cases based on the doctrine of res ipsa loquitur. Accidents Tribunals must take special care to see that innocent victims do not suffer and drivers and owners do not escape liability merely because of some doubt here or some obscurity there. Save in plain cases, culpability must be inferred from the circumstances where it is fairly reasonable. The court should not succumb to niceties, technicalities and mystic maybes."

18. When it is an admitted fact that S.T. bus was involved in the vehicular accident, it is a bounded duty of the driver of that S.T. bus to explain the circumstances in which the accident occurred. In this case, the motor cyclist expired in the vehicular accident, and therefore, the Tribunal cannot expect from the claimants to explain the circumstances in which the accident occurred. When it is the duty of the driver of offending vehicle to explain the accident, one has to see as to what his case for his explanation. Ms. Mayaben

Desai has drawn our attention to the written statement at Ex.14 which appears to have been filed by the driver of G.S.R.T.C. She has drawn our attention to Para 10 of the written statement in which certain facts are stated explaining the accident. The opponent No.1 S.T. driver stepped into the witness-box and gave his evidence at Ex.46. In Para 5 of his cross-examination, he has admitted that "he had not given any instruction for the written statement either to Advocate or to my S.T. persons". Thus, the opponent no.1 Driver of the offending vehicle does not rely on alleged written statement. Whatever written statement Ex.14 is filed, is filed by G.S.R.T.C. and not by the S.T. driver. G.S.R.T.C. being an owner of the offending vehicle cannot explain the circumstances leading to the accident because it is a statutory body and being an owner, it has to rely on the say of the driver on the basis of which written statement can be filed.

19. Here in this case, when the driver himself has said that he did not give any instructions either to his Advocate or the officers of the G.S.R.T.C., then the case pleaded in the written statement by opponent No.2 is baseless, because for that case, no instructions could be passed through the S.T. driver. Still however in absence of Written Statement, the opponent No.1 has given his evidence in his deposition Ex.46 and tried to explain the circumstances leading to the accident. It is well settled principle of law that in absence of pleading, no evidence of whatsoever nature in whatever quantity can be considered, and therefore, whatever facts stated in deposition by the driver of the S.T. cannot be accepted for consideration of the case, because there is no written statement in the eye of law from the side of S.T. driver.

20. At the outset of arguments, Shri Sandip C.Shah has argued that though both the parties led their respective case on the point of factum of accident, the Tribunal has not accepted the case of either parties, and reconstructed the case contrary to the evidence and in absence of evidence. In Para 11 of the judgment, the Tribunal has observed "whatever the parties and the witnesses might say, it does appear on reconstruction of the picture that the blood pool was at a distance of about 40 to 45 feet [from] the centre of the junction of the National Highway and the aforesaid approach road going towards the town of Prantij". Shri Sandip C.Shah has vehemently argued that there is no evidence on record to show that blood pool was at a distance of 42' to 45' away from the centre of the junction of the National

Highway. He has further argued that the Tribunal has discussed the evidence and appreciated it keeping in mind the distance of blood pool from the center point of junction as if it is proved from the record. He has argued that beginning of appreciation of evidence starts from these disputed facts that blood pool was at a distance of about 42' to 45' away from the center point of the junction.

21. Both the parties have no dispute with regard to panchnama Ex.44 of scene of accident. As discussed earlier, the road is of the width of 24' leading from east (Himatnagar) to west (Ahmedabad). Dead body of the deceased was found lying 7' away from the blood pool towards north. That blood pool was in the circumference of 3'. As deposed to by Vazirkhan Parabatkhan Pathan who was a driver of the S.T.Bus, the accident occurred near junction of the roads. As per his say, an approaching road coming from Harsol side was meeting the main road leading from east to west. As per his say, accident occurred when deceased, by driving motor cycle came from this approaching road leading from Harsol. The Tribunal has described this approaching road as Talod Road. In view of this case pleaded by the S.T. driver in his deposition, it is required to know as to at what distance from this junction (where this Harsol Road known as Talod Road meets the main Highway leading from east to west) dead body was lying. As per the say of the driver of the S.T. bus, the accident occurred just at the junction point where this approaching road leading from Harsol Road touches Main Road. As against this, it is the case of the claimants that accident did not occur near this intersection but it occurred far away on the main road towards west leaving intersection. From panchnama, it is crystal clear that the tar road leading towards Talod was there just near the Board indicating distance of 87 KMS. for Sabarmati Dharoi Yojana and that road was not in straight line but it was in form of curvature. Admittedly, that tar road leading to Talod was on southern side i.e. on the left side of the S.T. bus which was coming from eastern side. The Board indicating distance of 87 KMS for Sabarmati Dharoi Yojana, was at a distance of 42' towards east from this blood pool, and therefore, from panchnama, it can safely be said that point of impact was at a distance of 42' away from the intersection, and therefore, it is not correct that the accident occurred just at the road junction as alleged by the driver. Looking to the panchnama, the Tribunal has rightly observed that the blood pool was at a distance of 40' to 45' away from road junction. From the very beginning, it is the case of the claimants that the motor

cycle of the deceased was proceeding ahead of the S.T.bus and S.T.bus dashed against the motor cycle from behind the motor cycle. When point of impact is at a distance of about 45' towards west from the road junction, then a reasonable inference can be drawn that the motor cycle had already passed a distance of 45' from the road junction, and therefore, the story propounded by the S.T. driver in his deposition, in absence of any plea, is not plausible and same is unacceptable.

22. Much has been argued on the point as to which portion of the S.T. bus had dashed against which portion of the motor cycle. As per the case of the claimants, when the deceased, by driving motor cycle, was going towards west, S.T. bus came from behind and its left front portion dashed against the right portion of the motor cycle. This case is quite possible because the career which is fitted on the right side of the motor cycle just above the rear wheel of the said motor cycle was found lying at a distance of 25' from the motor cycle and that motor cycle was found lying on side of blood pool. Along with that career, one piece of Chappal was also found lying. This suggests that left front portion of S.T. bus had dashed against first with the career with so violent force that the career was severed from motor cycle and S.T. bus dragged it upto the distance of 25' from the motor cycle. It may be noted that the motor cycle was found lying near the blood pool, and therefore, the spot of blood pool can be said to be a real point of impact.

23. Admittedly, S.T. bus was found at a distance of 91' away from the blood pool towards west. The driver has admitted in his cross-examination that his bus was lying at the same place till the panchnama was drawn. When S.T. bus was found at a distance of 91' away from the point of impact, in absence of brake marks, one can infer that S.T. bus was running at high speed and the driver could be able to control it, after leaving distance of 91' leaving behind the motor cycle. Inspite of this, the driver has audacity to depose in his evidence that his bus was halted at a distance of 15' to 20' from that place. He has denied the case of the claimants that he had halted his bus at a distance of 90' from the place of the accident. It is also denied that his bus has dashed against the rear side of the motor cycle. He has also denied the case of the claimants that the dead body was lying at a distance of 91' behind his vehicle. He has shown his courage to depose that immediately the accident occurred, he applied brakes. Panchnama specifically speaks that there were no marks of application of brakes.

Opponent No.1 is an interested person because award was going to be passed against him. Criminal case was lodged against him, and therefore, his version is not accepted in absence of Written Statement in view of the panchnama Ex.44.

24. From the aforesaid evidence, it clearly evident that the accident did not occur at the road junction as alleged by the driver of the S.T. bus but the said accident occurred at a distance of 45' from the road junction towards west and after causing the accident, the S.T. bus proceeded further along with the career of Motor Cycle towards west and it could come into a stationary condition after leaving distance of 91'. It is also interesting to note that as per panchnama, steering and mudguard of the motor cycle had become bent and right side bumper was found broken. It is also interesting to note that handle portion of the accelerator of the motor cycle and wire of the accelerator were found lying near the S.T. bus. This fact makes it crystal clear that the entire right side of the motor cycle was damaged and that damage was caused by S.T. bus so violently that the career and handle portion and accelerator were broken and were dragged with the S.T.bus upto the distance of 91'. This fact clearly suggests that dash was so violent with great force that the deceased fell down from motor cycle on the road and died as a result of head injuries. Much has been argued that as to under what circumstances, the dead body and motor cycle were found on the right side of the road, if the left front side of the S.T.bus was dashed against right side of the motor cycle which was going towards west. There are no settled rules as to in what side and in what directions, the driver of the vehicle will fling on the road after the accident. The S.T. driver has tried to explain this fact but his evidence is unreliable and unacceptable. If his evidence is not taken into consideration, the fact remains that the accident occurred as stated by the claimants and the deceased died in that vehicular accident, and therefore, the Tribunal has rightly come to the conclusion that the S.T. driver was negligent for the said vehicular accident. The Tribunal assessed the negligence of S.T. driver to the extent of 50% and simultaneously the Tribunal has assessed the contributory negligence of the deceased to the extent of 50% as if same is proved by the S.T. driver. The Tribunal has accepted the case of the driver that the motor cycle dashed against S.T.Bus when the motor cycle entered into road junction while coming from Harsol side and motor cycle had dashed against the S.T. bus, and therefore, the Tribunal has assessed the

contributory negligence at the rate of 50%. As discussed earlier, the evidence is not correctly appreciated by the Tribunal because the dead body was found at the distance of 42' away from road junction and this only fact suggests that the motor cyclist had already come on the road leading from east to west and from the evidence which is discussed hereinabove, it clearly appears that S.T. driver dashed against the motor cycle from behind, and therefore, there cannot be any negligence on the part of the motor cyclist.

24.1 For a moment, if the case of S.T. driver is accepted, then also it is proved from evidence that he was solely responsible for the accident. The Tribunal has not properly appreciated the evidence in light of provisions contained in 10th Schedule of the Motor Vehicles Act, 1939. Relevant regulations of 10th Schedule read as follows:

1. The driver of a motor vehicle shall drive the vehicle as close to the left hand side of the road as may be expedient, and shall allow all traffic which is proceeding in the opposite direction to pass him on his right hand side.

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6. The driver of a motor vehicle shall slow down when approaching a road intersection, a road junction or a road corner, and shall not enter any such intersection or junction until he has become aware that he may do so without endangering the safety of persons thereon."

25. The effect of Regulation 6 is that the driver of the vehicle on the main road, as also the side road at the intersection is required to exercise due care and is enjoined upon not entering into the intersection until he has been able to take stock of the situation.

26. It is well settled law that at intersection where two roads crossed each other, it is the duty of a fast moving vehicle to slow down and if the driver did not slow down at intersection, but continued to proceed at a high speed without caring to notice that scooter was crossing, then the conduct of the driver necessarily leads to the conclusion that the bus was being driven by him rashly as well as negligently. The 10th Schedule appended to the Motor Vehicles Act, 1939 contain

statutory regulations that for driving of motor vehicles which also form part of every Driving License. Clause 6 of such Regulations clearly direct that the driver of every motor vehicle to slow down the vehicle at every intersection or junction of roads or at a turning of the road. It is also further provided therein that the driver of the vehicle should not enter the intersection or junction of the roads unless he makes sure that he would not thereby endanger any other person. Merely because, the driver of the bus was driving the vehicle on the left side of the road did not absolve him from his responsibility to slow down the vehicle as he approaches the intersection of roads, particularly when he could have easily seen, that the scooter over which the deceased was riding, was approaching the intersection.

27. In cross-examination, the driver of the offending bus has deposed that he has not seen the motor cycle coming on the road before the accident. He has further deposed that only after the accident occurred, he saw it. This theory propounded by the S.T. driver falls to the ground. If case of the S.T. driver is accepted, then he must have seen the deceased driving the motor cycle and coming from Talod side. When the S.T. driver saw the motor cycle after the accident occurred, it suggests that the motor cycle was going ahead of the S.T. bus, and therefore, the case of the S.T. driver is not acceptable on this count only.

28. When Regulation 6 of the 10th Schedule appended to the Act expects that the driver of the fast moving vehicle coming on the road must slow down at the intersection or junction of the roads or at a road corner, then he is expected to ascertain that there would be no danger to the persons there at the intersection and then he can enter into that intersection of the road. Here in this case, the accident occurred at a distance of 42' away from the road junction and after causing accident, the S.T. bus came to halt at a distance of 91' from the point of impact. This fact clearly shows that the S.T. bus driver had committed breach of Regulation 6 of Tenth Schedule and as a result of gross violation of Regulation 6, the accident occurred. The S.T. driver has deposed in his evidence that if the bus moves at a speed of 60 KMS PH. it could be halted at a distance of 30' maximum on application of brakes. Here in this case, the S.T. driver did not apply brakes after the accident. For a moment, if it is believed that he had applied the brakes, then according to his calculation, the speed of the S.T. bus can be inferred to be thrice to 60 KMS PH, because S.T. bus came to halt in a stationary condition

at a distance of 90' from the point of impact. This fact shows that the S.T. bus was coming with very excessive speed and the S.T.bus driver did not take any care or caution for compliance of Regulation 6 of the 10th Schedule, and therefore, looking to the facts and circumstances of the case, this Court is of the view that the Tribunal has grossly erred in assessing the negligence of the S.T. driver at the rate of 50%. Looking to the facts and circumstances of the case and breach of Regulation 6 of the 10th Schedule committed by the S.T. driver and distance of the S.T. from point of impact after the accident, it can safely be said that the S.T. driver was solely responsible for the accident.

29. This Court has come to a conclusion that the accident did not occur at road junction but it occurred at a distance of 42' away from the road junction. This Court has also come to the conclusion that motor cycle was going ahead of the S.T. bus and front left portion of the S.T. bus dashed against the right side of the motor cycle as a result of which the motor cycle and deceased flung over and fell on the road. In view of this, therefore, there was no contributory negligence on the part of the deceased. The Tribunal has grossly erred in assessing the contributory negligence at the rate of 50% in absence of any convincing and concrete pleading on the side of the opponents.

30. In view of what is stated hereinabove, the case advanced by Mr. Sandip C. Shah is accepted. The learned trial Judge of the Tribunal has grossly erred in assessing the contributory negligence at the rate of 50% on the part of the deceased. This Court has come to a conclusion that the S.T. driver was solely responsible for the accident, and therefore, deduction of Rs.60,000/being an amount of 50% deducted from Rs. 1,20,000/- is unwarranted and hence that deduction is required to be set aside.

31. In view of this, this appeal is allowed. The applicants original claimants are made entitled to recover Rs.1,20,000/- as compensation from the opponents. Rest of the award is hereby confirmed. The order with regard to disbursement of compensation be made proportionately to awarded amount of Rs.1,20,000/-. The respondents shall bear the costs of the appellants for this appeal and shall bear their own. Award be drawn accordingly.

Date: /12/2001. ------